

DECISION



18713
P.L.-1
Ruppert

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-200536

DATE: July 7, 1981

MATTER OF: Vector Engineering, Inc.

DIGEST:

1. Evaluation of proposals on basis that contract was to be support contract rather than operation contract was not inappropriate where RFP stated resulting contract is to provide support contractor for operating and maintaining facility under DOE management.
2. Source Evaluation Board did not act inappropriately when it did not consider qualifications of key personnel in evaluating adequacy and suitability of proposed project organization for accomplishing work and contractor's experience, responsibility and past performance in similar programs, since qualifications of key personnel were set forth as separate evaluation category.
3. Protester has not supported its contention that pressure was exerted upon Source Evaluation Board to find successful offeror's proposal superior.
4. Reasonable basis for Source Selection Official (SSO) selection exists where SSO considered proposals in relation to specified evaluation criteria and on balance found selected offeror's proposal contained overriding factors.
5. Even if requirement in RFP evaluation factors for experience in similar programs is considered to be definitive responsibility criterion,

[Protest of DOE Contract Award]

~~D17485~~ 115711

no objection will be taken to contracting officer's affirmative determination of responsibility based on definitive criteria where offeror submitted evidence to comply with criteria, since extent to which work is similar to work required by solicitation is largely within sound discretion of contracting officer.

6. Source Evaluation Board and Source Selection Official could properly consider experience and organization of offeror's parent company in evaluating proposal, since offeror represented that all resources of parent company would be committed to project.
7. Even if offeror's incumbency as contractor placed protester at competitive disadvantage, that fact does not provide basis to sustain protest.
8. Assuming agency should not have made award while protest was pending, legality of award would not be affected.

Vector Engineering, Inc. (Vector), protests the award of a contract to Boeing Services International (BSI) under request for proposals (RFP) No. DE-RP02-80-ET14261 issued by the Department of Energy (DOE).

Vector contends that the award to BSI was improper because the contract was for the operation of a mining equipment test facility, but proposals were evaluated for a support contract. Vector states that BSI does not have the kind of personnel needed to operate the facility and that this inadequacy should have had such an impact upon several of the evaluation factors that BSI should not have been selected for award. Vector avers that undue pressure was exerted upon the Source Evaluation Board (SEB) to determine that BSI's proposal was superior to Vector's. Vector also states that BSI had an unfair competitive advantage in preparing its proposal because it was an onsite contractor at the time proposals were being prepared. Finally,

Vector objects to an award being made while the protest was pending in our Office.

We find no basis to question the award.

RFP paragraph A.3, "DESCRIPTION OF WORK BEING PROCURED," states "[t]he resulting contract is to provide a support contractor for operating and maintaining the facility under DOE management." It is clear from that statement that the contract was to be a support contract rather than an operation contract. Evaluation of proposals on the former basis was not inappropriate in the circumstances.

As to the evaluation of proposals, it is not the function of our Office to reevaluate technical proposals. We only examine the record of the procurement to determine whether the judgment of the contracting agency was clearly without a reasonable basis. The fact that a protester disagrees with an agency's evaluation does not in itself establish that the evaluation clearly had no reasonable basis. In support of the statements in this paragraph, see Macro Systems, Inc., et al., B-195990, August 19, 1980, 80-2 CPD 133.

The evaluation factors that Vector believes were not properly implemented are:

(1) adequacy and suitability of proposed project organization for accomplishing the statement of work;

(2) contractor's experience, responsibility and past performance in similar programs; and

(3) qualifications of key personnel.

Vector contends that the qualifications of its key personnel were superior to BSI's and that factor should have permeated the other two factors.

The SEB report acknowledges the outstanding qualifications and the directly relevant experience

of Vector's key personnel and rates Vector higher than BSI in this category. However, BSI rated higher than Vector on the other two categories. Those categories were not evaluated from the standpoint of the key personnel. The first category was evaluated from the standpoint of the organizational structure. The second category was evaluated from the standpoint of the contractor's background. Since qualifications of key personnel were set forth as a separate category, the SEB did not act inappropriately in excluding it from consideration of the other two categories.

DOE denies that pressure was exerted upon the SEB to determine that BSI's proposal was superior to Vector's. Vector has furnished no evidence to support its position.

Moreover, the final selection of the successful offeror was not made by the SEB. The SEB submitted its appraisal report of proposals to the Source Selection Officer (SSO) who made the final determination. The SSO recognized that Vector's strongest point was its technical professionals, but on balance decided that BSI's organization and experience, as well as other factors set forth in the RFP for evaluation which are not disputed, were overriding. Thus, the SSO took into consideration the RFP evaluation criteria and in his judgment decided that BSI was superior to Vector.

Vector contends that our Office should overturn the SSO selection on the basis that definitive responsibility criteria were not applied. In this regard, Vector contends that the experience which BSI detailed in its proposal was not, as the RFP required, similar to that involved in the immediate contract. However, the information requested of offerors in their proposals was not to test the responsibility of the offerors, but to determine compliance with the technical criteria. In any event, even if the requirement for similar experience is considered as a definitive responsibility criterion, literal compliance is not required if a level of achievement equivalent to that specified

in the solicitation can be demonstrated. Pikes Peak Community College, B-199102, October 17, 1980, 80-2 CPD 293. Our Office will not object to a contracting officer's affirmative determination of responsibility based on definitive criteria set forth in a solicitation where the offeror did submit evidence to comply with the definitive criteria since the extent to which work referenced by the offeror is similar to work required by the solicitation is largely within the sound discretion of the contracting officer. Mosler Airmatic Systems Division, B-187586, January 21, 1977, 77-1 CPD 42. Determinations based on such discretion will be upheld in the absence of a showing of fraud in reaching those determinations. Yardney Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376.

Vector also questioned the propriety of the SEB and SSO considering the experience of the Boeing Company as if it were BSI. However, that was not inappropriate, since BSI represented in its proposal that all the resources of the parent Boeing Company would be committed to the project.

In the circumstances, we find there was a reasonable basis for the SSO selection of BSI.

Further, even if BSI's incumbency as a contractor placed Vector at a competitive disadvantage, we have held that the fact that certain firms enjoy a competitive advantage by virtue of their incumbency or their own particular circumstances does not provide a basis to sustain a protest. Fox & Company, B-197272, November 6, 1980, 80-2 CPD 340.

Finally, assuming the agency should not have made award to BSI while the Vector protest was pending, the legality of the award would not be affected. SAI Comsystems Corporation, B-196163, February 6, 1980, 80-1 CPD 100.

Accordingly, the protest is denied.



Acting Comptroller General
of the United States